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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

LEONARD COTTRELL, SANDRA HENON, )  
WILLIAM REEVES, GEORGE HERMAN, )  
SIMON NAZZAL, CAROL FREBURGER, JACK )  
LIGGETT, PATRICIA BOUGH, MACK )  
BROWN, DOLORES GILLESPIE, DEBORAH )  
HARRINGTON, ROBERT INGINO, EDWARD ) Civil Action No.  
ROGERS, JR., DEBORAH RUSIGNUOLO, ) 3:14-cv-05859-BRM-LHG  
DOROTHY STOKES, JOSEPHINE TROCCOLI, )  
HURIE WHITFIELD, THOMAS LAYLOFF, )  
CAROLYN TANNER, PATSY TATE, JOHN ) RETURN DATE:  
SUTTON, JESUS RENTERIA, GLENDELIA ) NOVEMBER 5, 2018  
FRANCO, and NADINE LAMPKIN, on behalf of )  
themselves and all others similarly situated, )  
)

Plaintiffs, )

v. )  
)

ALCON LABORATORIES, INC.; ALCON )  
RESEARCH, LTD.; FALCON )  
PHARMACEUTICALS, LTD.; SANDOZ, INC.; )  
ALLERGAN, INC.; ALLERGAN USA, INC.; )  
ALLERGAN SALES, LLC; PFIZER INC.; )  
VALEANT PHARMACEUTICALS )  
INTERNATIONAL, INC.; BAUSCH AND )  
LOMB INCORPORATED; ATON PHARMA, )  
INC.; MERCK & CO., INC.; MERCK, SHARP & )  
DOHME CORP., PRASCO, LLC; and AKORN, )  
INC., )  
Defendants. )

**RENEWED MOTION BY DEFENDANTS FALCON  
PHARMACEUTICALS, LTD., SANDOZ INC., PRASCO LLC, AND  
AKORN, INC. TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

**TO: ALL COUNSEL OF RECORD RECEIVING ECF NOTICE AND ALL  
COUNSEL LISTED ON THE ATTACHED SERVICE LIST**

**COUNSEL:**

**PLEASE TAKE NOTICE** that, pursuant to Rule 12(b)(6), Fed. R. Civ. P., on November 5, 2018, or as soon thereafter as counsel may be heard, defendants Falcon Pharmaceuticals, Ltd., Sandoz Inc., Prasco LLC, and Akorn, Inc. (the “Generic Defendants”), by their undersigned attorneys, will move the United States District Court for the District of New Jersey, in the above-referenced action, for an Order Dismissing the Amended Complaint on the following grounds:

(a) Pursuant to Rule 12(b)(6), Fed. R. Civ. P., the claims asserted and the relief demanded by plaintiffs should be dismissed because they are preempted by the Federal Food, Drug and Cosmetic Act (“FDCA”), as administered by the U.S.

Food and Drug Administration (“FDA”), under the holdings of *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011), and *Mutual Pharmaceutical Co. v. Bartlett*, 133 S. Ct. 2466 (2013), as more fully set forth in the movants’ accompanying Memorandum of Law in Support of Motion to Dismiss; and,

(b) Pursuant to Rule 12(b)(6), Fed. R. Civ. P., the claims asserted and the relief demanded by plaintiffs should be dismissed on the grounds set forth in the Brand Name Defendants’ Motion to Dismiss (the “Brand Name Motion”), which the Generic Defendants hereby join in and incorporate by reference, including the grounds that (i) Plaintiffs’ claims are preempted by federal law under *Mensing* and *Bartlett*, because, even if the Generic Defendants were not subject to a federal duty of sameness, it would still be impossible for them to reduce their drop volume to 15 µL without prior FDA approval; and (ii) Plaintiffs have failed to state a claim under any of the six state consumer protection statutes asserted in the Amended Complaint.

**PLEASE TAKE FURTHER NOTICE** that, the Generic Defendants rely on the accompanying Brief In Support Of This Motion and the accompanying Proposed Order.

**PLEASE TAKE FURTHER NOTICE** that the Generic Defendants hereby request oral argument on this motion.

Dated: August 24, 2018

Respectfully submitted,

s/ Roger B. Kaplan

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### **CERTIFICATION OF SERVICE**

ROGER B. KAPLAN, being of full age, hereby certifies that on this 24<sup>th</sup> day of August 2018, in addition to service via the Court's ECF system for all counsel registered to receive service via the ECF system, I caused a true and correct copy of the foregoing Notice of Motion, together with the Accompanying Brief in Support of Motion and Proposed form of Order to be served by electronic mail on the following counsel:

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I hereby certify that the foregoing is true. I am aware that if the foregoing is willfully false I am subject to punishment.

Date: August 24, 2018

/s/ Roger B. Kaplan  
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